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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA

ENOCH ADAMS, JR., LEROY ADAMS,)
ANDREW KOENIG, JERRY NORTON,)
DAVID SWAN, JOSEPH SWAN,)
Plaintiffs,)
)
vs.)
)
TECK COMINCO ALASKA)
INCORPORATED,)
Defendant,)
)
NANA REGIONAL CORPORATION, and)
NORTHWEST ARCTIC BOROUGH,)
Intervenor-Defendants.)
	Case No.: A04-00049 CV (JWS)
)

**TECK COMINCO'S
 OBJECTIONS TO PLAINTIFFS' EXHIBITS**

Teck Cominco objects that the plaintiffs did not number the pages of their exhibits in accordance with the instructions of the clerk. As filed with the court, Exhibits 115, 116, 117, 118, 119, 120, 121, 124, 125, 127, 131, 138, 151, 152, 153, 154, 155, 159 and 168 each represent on their initial page that they include a number of pages that is different than the actual number included within the exhibit:

Exhibit No.	Pages Represented	Pages Included
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115	68	60
116	59	62
117	51	63
118	83	85
119	43	45
120	11	13
121	15	16
124	25	26
125	6	7
127	8	9
131	4	14
138	128	129
151	19	20
152	19	21
153	19	20
154	19	21
155	14	15
159	19	20
168	65	18

This further raises issues as to authenticity and foundation.

Exhibit 1: The plaintiffs' exhibit list indicates that the exhibit consists of documents TC 050583 RD through TC 050637 RD, and asserts that it is an October 2007 DMR. TC 050583 RD through TC 050637 RD is the August DMR, not October. Regardless of which month is intended to be Exhibit 1, it is a duplicate of either joint exhibit 3029 (August) or 3029 (October). Teck Cominco did not agree to admit a duplicate exhibit.

Exhibit 5: The document filed with the court is an "excerpt". The entire document should have been included. [Fed.R.Evid. 106.]

Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,
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29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41: The documents are each incomplete. The complete DMR's for the months indicated are found in TCAK/NANA exhibits 1008, 1020, 1031, 1043, 1055, 1084, 1099, 1110, 1117, 1125, 1136, 1149, 1165, 1172, 1193, 1202, 1217, 1229, 1245, 1261, 1275, 1306, 1634, 1339, 13401394, 1418, 1446, 1488, and 1604. [Fed.R.Evid. 106.]

Exhibit 12: This is additionally objectionable because Document TC-000776 RD through TC 000835 RD (referenced in the exhibit list as being his exhibit) are not a September 1999 DMR.

Exhibit 30: This is a duplicate of joint exhibit 3015. Teck Cominco did not agree to separately admit a duplicate. [Fed.R.Evid. 403.]

Exhibit 38: This exhibit is additionally objectionable because it includes portions of two unrelated DMR's as though they were a single document. [Fed.R.Evid. 901(a); 403.]

Exhibits 43 through 70: Teck Cominco does not object to these exhibits so long as they are used for demonstrative purposes and it is understood that they are each a page taken from the complete Exhibits 1011-1019; 1021-1030; 1035-1042; 1044-1054; 1057-1072; 1074-1083; 1091-1098; 1102-1109; 1113-1116; 1118-1124; 1126-1135; 1138-1148; 1152-1164; 1170-1171; 1173-1192; 1199-1201; 1207-1216; 1218-1228; 1230-1244; 1246-1260; 1262-1264; 1266-1274; 1276-1305; 1307-1338; 1341-1393; 1395-1417; 1419-1445; 1447-1487; 1489-1603; 1605-1612; 1614-1633; 1755-1798. Otherwise, Teck Cominco objects that they are incomplete documents. [Fed.R.Evid. 106.]

Exhibits 71, 72: Teck Cominco does not object to the admission of these exhibits, but does object to any inference that the contents have any particular meaning. The
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documents are authentic. It has not been established whether the contents are. [Fed.R.Evid. 901(a).]

Exhibit 73: Teck Cominco objects to the third page of the exhibit filed with the court as not being the same document as the first two pages. The first two pages of this exhibit are a duplicate of Exhibit 1709. [Fed.R.Evid. 403.]

Exhibits 74 through 99 and 101 are marked as “admitted”. Teck Cominco was not shown these exhibits (or Exhibit 100), and did not agree to have them admitted. With the exception of Exhibits 77, 81, 86, and 101 all are duplicates or partial duplicates of other exhibits. (See Exhibits 1009, 1010, 1032, 1033, 1056, 1073, 1087, 1089, 1086, 1111, 1137, 1150, 1157, 1169, 3050, 3051, 1196, 1197, 1198, 1203, 3052, 1204.) Exhibit 77 is missing 13 pages. Exhibit 78 is missing the attached Parametrix Report. the complete document is found at 1032. Exhibits 75, 79, 91, 97, and 99 are each missing their fax cover sheets. The complete documents are found at Exhibits 1010, 1033, 1169, 1203, and 1204. Exhibits 92, 93, 94, 95, and 96 are each missing their fax cover sheets and their spill reports. The complete documents are found at Exhibits 3050, 3051, 1196, 1197, and 1198. [Local Rule 39.3; [Fed.R.Evid. 403; 106.]

Exhibit108: As filed with the court, the document is incomplete, as it does not include the “Attachment D” referenced within. Teck Cominco did not agree to an incomplete document being admitted. [Fed.R.Evid. 106.]

Exhibit109: As filed with the court, the document is incomplete, as it does not include the “Attachment F” referenced within. Teck Cominco did not agree to an incomplete document being admitted. [Fed.R.Evid. 106.]

Exhibit 122: The Exhibit received by Teck Cominco is missing the first page.

[Fed.R.Evid. 106.]

Exhibit 134: This exhibit is an incomplete document in that it appears to be missing 2 pages. The attachment to the letter was not produced to Teck Cominco in the course of discovery. [Fed.R.Evid. 106; Fed.R.Civ.P. 37(c)(1).]

Exhibit 135 This exhibit is incomplete in that it is missing the attachment referenced within. Teck Cominco did not agree to admit this exhibit, although the exhibit sticker indicates it did. [Fed.R.Evid. 106.]

Exhibit 138: The exhibit at page 1, and the exhibit list suggest this exhibit is a 128 page document spanning pages TC 027530-027568 RD. The exhibit should properly include 129 pages numbered TC 027530 RD through TC 027658 RD. Teck Cominco did not agree to admit this exhibit. This exhibit needs a foundation. [Fed.R.Evid. 106; 901(a).]

Exhibits 139, 140, 141, 143, and 144 each need a foundation. [Fed.R.Evid. 901.]

Exhibit 142: Expert testimony should be presented as testimony, and not as an exhibit. This exhibit needs a foundation. [Fed.R.Evid. 801; 802; 611(b); Fed.R.Civ.P. 43.]

Exhibit 146: Expert testimony should be presented as testimony, and not as an exhibit. [Fed.R.Evid. 801; 802; 611(b); Fed.R.Civ.P. 43; See also TCAK/NANA motion to strike plaintiffs revised expert reports.]

Exhibit 147: No such DVD was produced to the defendants until after this exhibit was filed with the court. Authenticity is unknown. Foundation is needed. [Fed.R.Civ.P. 37(c).]

Exhibit 150: The exhibit copy indicates the original exhibit is a certified record.
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Teck Cominco has no objection if in fact the original exhibit is a certified copy. Since the document was never produced in discovery, and Teck Cominco otherwise has had no opportunity to verify its contents, Teck Cominco objects. [Fed.R.Civ.P. 37(c); Fed.R.Evid.902.]

Exhibit 151: The exhibit list indicates that the exhibit encompasses only pages TC 027767 - 027780 RD. The exhibit produced to Teck Cominco incorporates pages TC-027767 RD through TC 027786 RD.

Exhibits 160, 161, 162, 163, 164: These documents purport to be from Teck Cominco Limited, which is not defendant Teck Cominco Alaska Incorporated. As such they are irrelevant. Exhibits 161, 162 and 164 were not produced in the course of discovery. Exhibits 161, 162 and 164 appear to be incomplete. As to all five of these exhibits, they have not been authenticated and there is no foundation underlying their admission. [Fed.R.Evid. 402; 106; 901.]

Exhibit 165: As filed with the court, the exhibit is incomplete. A complete copy of the document is found at Exhibit 1730. Teck Cominco did not agree to admit a duplicate or incomplete exhibit. [Fed.R.Evid. 106.]

Exhibit 166: As filed with the court, the exhibit appears to be a copy of Exhibit 1729, except that the bates numbers have been removed from each page, making it difficult to verify authentication. Teck Cominco did not agree to admit a duplicate exhibit. [Fed.R.Evid. 901.]

Exhibit 167: This exhibit is a duplicate of Exhibit 1731. Teck Cominco did not agree to admit a duplicate exhibit. [Fed.R.Evid. 403.]

Exhibit 168: Expert testimony should be presented as testimony, and not as an exhibit. See also first objection above (exhibit represents it has 65 pages; only 18 included). [Fed.R.Evid. 801; 802; 611(b); [Fed.R.Civ.P. 43.]

Exhibit 169, 170: These exhibits need a foundation. [Fed.R.Evid. 901.]

Docket 190 at p. 9, lines 20-24: The exhibit list indicates that an unknown number of documents are exhibits, including five that are identified by reference. None of these exhibits have been marked or offered to the defendants for review. [Docket 177.]

DATED at Anchorage, Alaska, this 29th day of January, 2008.

HARTIG RHODES HOGE & LEKISCH, P.C.
Attorneys for Teck Cominco Alaska, Inc.

By: 
Sean Halloran

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2007,
a true and correct copy of the foregoing was served,
via electronic service, on the below identified parties of
record:

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